IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10022 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

KUSUMBEN WD/O. SOMCHAND MAKWANA - Respondent(s)

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Appearance :

MR DIPEN A DESAI for Petitioner(s) : 1,
MR JIGAR P RAVAL for Respondent(s) : 1,
None for Respondent(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 30/01/2006

ORAL JUDGMENT

1. Heard learned Advocate, Mr.Dipen A. Desai, appearing on behalf of petitioner and learned Advocate, Mr.Jigar P. Raval, on behalf of respondents.

2. In the present petition, the petitioner – Corporation has challenged the award passed by Labour Court, Baroda in Reference No.464 of 1995 dated 1st June,2001, wherein, Labour Court has granted 50% back wages for interim period with effect from 28th August,1993 till the date of retirement of concerned respondent. Labour Court has awarded Rs.1000/- cost to be paid to the workman by petitioner - Corporation.

3. Learned Advocate, Mr.Desai, appearing on behalf of petitioner submitted that Labour Court has committed gross error in not deciding the dispute which was referred for adjudication by the appropriate Government. He submitted that whether dismissal order passed by Corporation is legal or valid or not, has not examined by Labour Court, Baroda. He further submitted that there is no finding given by Labour Court on the basis of evidence produced by Corporation that whether dismissal is justified or not. He also submitted that on what basis the finding is perverse or baseless, for that no reasons have been recorded by Labour Court. He submitted that when workman retired from service during the pendency of reference, workman has submitted purshish not to claim

right of reinstatement, then, there is no reason to pass such kind of order in absence of evidence on record. He also submitted that Labour Court has committed gross error in granting 50% back wages of interim period when there was no evidence from the workman to remain unemployed during the interim period. Therefore, according to him, Labour Court has not decided the reference in accordance with law and in support of its conclusion, no reasons have been given by Labour Court and award is passed with non-application of mind. Therefore, same may be quashed and set aside.

4. Learned Advocate, Mr.Raval, appearing for respondents has submitted that it is true that Labour Court has not examined the legality and validity of dismissal order and also not discussed that on what basis, the finding is baseless and perverse. He also admits that there was no evidence of workman before Labour Court about unemployment and in absence of that, Labour Court has granted 50% back wages of interim period. However, he clarified that even if there was some evidence but, it has not been taken into account by Labour Court while granting relief in favor of respondent - workman. Learned Advocate, Mr.Raval, is not able to

given date of retirement of respondent - workman.

5. I have considered submissions made by both learned Advocates and I perused the award passed by Labour Court. The incident occurred on 2nd April,1993 where certain allegations were made against workman that he was remained negligent in maintaining stores register. On the basis of these allegations, charge-sheet was served and after departmental inquiry, respondent – workman was dismissed from service on 27th August,1993. Before the Labour Court, workman was examined vide Exh.12 and no oral evidence led by petitioner – Corporation. On behalf of workman, purshish was filed that workman has already reached the age of superannuation during the pendency of reference. Therefore, right of reinstatement is not claimed by workman and request was made to consider the interim period upto the date of superannuation and to grant back wages of interim period. The written statement filed by petitioner – Corporation vide Exh.9 and vide Exh.10 documentary evidence was produced by petitioner – Corporation. Before Labour Court, no doubt, workman has raised contention about legality and validity of departmental inquiry and on that basis, evidence was led before Labour Court but, Labour Court has not decided

this preliminary issue when workman has challenged the legality and validity of the departmental inquiry. However, Labour Court has considered the merits of the matter and come to the conclusion that there was no charge of misappropriation and only charge of negligence was found to be proved. Therefore, Labour Court come to conclusion that finding given by the departmental authority is perverse. In past record also, there are number of misconduct committed by workman. But, Labour Court has considered only 35 years' service of the workman and granted the benefit of 50% back wages without adjudicating the main dispute of dismissal is legal or valid or not.

6. In view of these observations made by Labour Court, when main dispute is not examined by Labour Court, whether dismissal order passed by Corporation is legal or valid or not. In absence of this finding, on what basis the Labour Court has granted the benefit of 50% back wages of interim period. Labour Court has not given any reason in coming to conclusion that finding is perverse. There is no discussion in the award that on what basis, Labour Court has come to conclusion that finding is perverse. There is no discussion that on what basis 50%

back wages was granted by Labour Court. There is no discussion in the award, whether workman was remained unemployed or not. Therefore, considering this irregularity committed by Labour Court while adjudicating the reference under the machinery of I.D.Act,1947, the Labour Court has apparently committed error in not deciding the reference in accordance with law. Main dispute remained undecided or not adjudicated and no reason in support of its conclusion has been given. There is no reason also given by Labour Court that on what basis, 50% back wages was awarded in favour of respondent. Therefore, considering the contention raised by learned Advocate, Mr.Desai, that the Labour Court has committed gross error in passing such award, according to my opinion, Labour Court has decided the reference without application of mind and not examined the matter in accordance with law. No reasons in support of the conclusion is given. Therefore, in view of these facts, the award passed by Labour Court in Reference No.464 of 1995 dated 1st June,2001 is required to be quashed and set aside.

7. In the result, present petition is allowed. Award passed by Labour Court, Baroda in Reference No.464 of

1995 dated 1st June,2001 is hereby quashed and set aside with a direction to Labour Court, Baroda to decide afresh Reference No.464 of 1995 in accordance with law, after giving reasonable opportunity to respective parties, within a period of six months from the date of receiving writ of this order. Accordingly, rule is made absolute with no order as to costs.

(H.K.RATHOD,J.)

(vipul)